

Construction contractors who physically incorporate tangible personal property into real estate owned by exempt organizations or governmental entities that hold tax exempt "E" numbers can purchase such property tax free by providing their suppliers with the certification described in 86 Ill. Adm. Code 130.2075(d). See 86 Ill. Adm. Code Section 130.2075. (This is a GIL.)

September 9, 2009

Dear Xxxxx:

This letter is in response to your letter dated January 28, 2009, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.tax.illinois.gov to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I have a commercial contractor bidding on jobs involving various non-profit entities. The non-profit entities are typically schools. Because these contracts are different than normal and involve several states they have asked that I seek an opinion from each state as to how the sale/use tax implications will be seen on these jobs and if a change in the structure of the contract will change the sales/use tax implications. The following is the detail:

The job proposals are coming from a for profit entity that has food service contracts with various non-profit entities. The food service company has agreed as part of their contract (in negotiations) to make improvements to their locations that are owned by the non-profit entities. The improvements being done will be paid by the food service company. In the contract, the non-profit designates the food service company and its contractor to act as agents for the school and thereby issues a letter with its tax exempt certificate number to be used on this project. The improvements as completed are owned by the non-profit.

Part of the improvements will involve building casework for the food service line (checkout, display shelves, prep area etc.) Would these be subject to sales tax? Would it change if the non-profit entity purchased these direct? Should the billing be written as

SOLD TO: the institution and the contractor (much of the casework will be manufactured by a sub-contractor and installed by the contractor)?

My client is interested in making sure the contract for this job is structured correctly so that no unintended consequences in the sales and/or use tax area exist. Their customer has indicated that the job contract can be re-structured to make sure the sales tax exempt status of the non-profit entity can be realized. Your input would be appreciated.

Finally, if the contract needs to be written under the non-profit to get the exempt status realized, can the non-profit enter into a contract with the general contractor to act as a purchasing agent? The non-profit would prefer not to be invoiced individually for all materials and would like to take advantage of any contractor discounts it may have. So, if the non-profit enters into a signed contract with the general contractor to act as a purchasing agent for the non-profit to purchase job materials; will their tax-exempt status for sales tax still be recognized or would the state not recognize this type of agreement/contract?

If it would help, I can be reached for a phone conversation to clarify any facts.

DEPARTMENT'S RESPONSE:

Sales to exempt organizations (organizations that qualify as exclusively religious, charitable, or educational) and governmental entities are subject to tax unless the exempt organization or governmental entity has obtained an active exemption identification number ("E" number) from the Department. See 86 Ill. Adm. Code 130.2007 and 130.2080. Persons or businesses selling tangible personal property to these organizations or governmental entities must be provided with an "E" number for the sales to be tax exempt, unless another exemption can be documented. It is important to note that only sales of tangible personal property invoiced to the organization or governmental entity itself are exempt. Sales made to an individual member or client of an exempt organization or entity are generally subject to tax.

If a person or business is contractually required to purchase tangible personal property for incorporation into real estate, then that person or business would be acting as a construction contractor. Construction contractors in Illinois are deemed to be the end users of tangible personal property purchased for incorporation into real property and owe Use Tax on those materials. 86 Ill. Adm. Code 130.2075. However, purchases of tangible personal property by a construction contractor for incorporation into the real estate owned by an exempt organization or governmental entity that possesses a valid "E" number at the time of sale may be made free of Illinois Retailers' Occupation Tax and Use Tax under the provisions of 86 Ill. Adm. Code 130.2075(d).

In claiming the exemption from tax, the construction contractor must provide its supplier with a certification stating that its purchases are for conversion into real estate under a contract with an exempt organization or governmental entity, identifying the organization or entity by name and address and stating on what date the contract was entered into. The construction contractor must also provide the "E" number issued by the Department to the organization or entity for which the purchasing contractor is acting. See 86 Ill. Adm. Code 130.2075(d)(4).

I hope this information is helpful. If you require additional information, please visit our website at www.tax.illinois.gov or contact the Department's Taxpayer Information Division at (217) 782-3336.

Sincerely,

Samuel J. Moore
Associate Counsel

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